



Atty. Dkt. No. 016778-0446

1/11/08 DAC \$

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Nami Isomae
Title: PAGING SYSTEM
Appl. No.: 10/069,957
Filing Date: 09/08/2000
Patent No.: 7,450,956
Grant Date: 11/11/2008
Examiner: Duc Nguyen
Art Unit: 2617
Confirmation Number: 3104

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on November 11, 2008 as U.S. Patent No. 7,450,956.

The Patent Office determined that the patent was entitled to 1038 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

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On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1639 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1839 days
(b) Total Applicant delay:	200 days
Final PTA Determination:	1639 days

Applicants therefore respectfully request that the patent be accorded 1639 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date 12/31/2008

By 

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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 016778-0446

Application Number: 10/069957

Patent Number: 7450956



	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	09/08/1999	-911		
Edit Delete	International Filing Date	09/08/2000	-545		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	03/07/2002	0		
	PCT National Stage Commencement Date	03/07/2002	0		
	14 month From Application date	05/07/2003	426		
	3 Year Period Starts	03/07/2005	1,096		
Edit Delete	Restriction Requirement	09/26/2006	1,664	(1238)	
Edit Delete	Restriction Requirement Response Received at PTO	11/27/2006	1,726		
Edit Delete	Non-Final Office Action	02/23/2007	1,814		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/22/2007	1,902		
Edit Delete	IDS under 1.704(c)(8) filed at PTO	08/16/2007	1,988		86
Edit Delete	Final Office Action	08/21/2007	1,993		
	Final Office Action + 3 months	11/21/2007	2,085		
Edit Delete	Final Office Action Response Received at PTO	02/07/2008	2,163		
Edit Delete	Notice of Appeal Received at PTO	02/20/2008	2,176		91
Edit Delete	Advisory Action	03/17/2008	2,202		
Edit Delete	Request For Continued Examination	05/19/2008	2,265		
	3 Year Period Stopped	05/19/2008	2,265	(1169) 1839	
Edit Delete	Notice of Allowance	06/24/2008	2,301		
Edit Delete	Issue Fee Paid	09/17/2008	2,386		
Edit Delete	Rule 312 Amendment Received at PTO	09/17/2008	2,386		
Edit Delete	Response to Rule 312 Communication Received	10/09/2008	2,408		23
Edit Delete	Patent Grant Date	11/11/2008	2,441		
	Totals:			1,839	200
	PTA:			1,639	

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